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HOUSE BILL 2546

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State of Washington                      60th Legislature                      2008 Regular Session

By Representatives Dunshee, McIntire, Lantz, Hudgins, and Simpson

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1            AN ACT Relating to solar easements; and amending RCW 64.04.140,  
2            64.04.150, 64.04.160, and 64.04.170.

3            BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4            **Sec. 1.** RCW 64.04.140 and 1979 ex.s. c 170 s 1 are each amended to  
5            read as follows:

6            The legislature declares that the potential economic and  
7            environmental benefits of solar energy use are considered to be in the  
8            public interest; therefore, local governments are authorized to  
9            encourage and protect access to direct sunlight for solar energy  
10           systems. The legislature further declares that solar easements  
11           appropriate to assuring continued access to direct sunlight for solar  
12           energy systems may be created and may be privately negotiated, but that  
13           property owners with solar energy systems erected and operating on  
14           their property on or after January 1, 2009, have an implied solar  
15           easement.

16           **Sec. 2.** RCW 64.04.150 and 1979 ex.s. c 170 s 12 are each amended  
17           to read as follows:

18           (1) As used in this chapter:

1 (a) "Solar energy system" means any device or combination of  
2 devices or elements which rely upon direct sunlight as an energy  
3 source, including but not limited to any substance or device which  
4 collects sunlight for use in:

- 5 (i) The heating or cooling of a structure or building;
- 6 (ii) The heating or pumping of water;
- 7 (iii) Industrial, commercial, or agricultural processes; or
- 8 (iv) The generation of electricity.

9 A solar energy system may be used for purposes in addition to the  
10 collection of solar energy. These uses include, but are not limited  
11 to, serving as a structural member or part of a roof of a building or  
12 structure and serving as a window or wall; and

13 (b) "Solar easement" means a right, expressed as an easement,  
14 restriction, covenant, or condition contained in any deed, contract, or  
15 other written instrument executed by or on behalf of any landowner for  
16 the purpose of assuring adequate access to direct sunlight for solar  
17 energy systems. Solar easements for solar energy systems erected and  
18 operating on or after January 1, 2009, are implied and need not be  
19 written instruments.

20 (2) Except as provided otherwise in this chapter, a solar easement  
21 is an interest in real property, and shall be created in writing and  
22 shall be subject to the same conveyancing and instrument recording  
23 requirements as other easements. Solar easements for solar energy  
24 systems erected and operating on or after January 1, 2009, are implied  
25 and are not subject to conveyance and instrument recording requirements  
26 applying to other easements.

27 (3) A solar easement shall be appurtenant and run with the land or  
28 lands benefited and burdened, unless otherwise provided in the  
29 easement.

30 (4) Any instrument creating a solar easement shall include but not  
31 be limited to:

32 (a) A description of the real property subject to the solar  
33 easement and a description of the real property benefiting from the  
34 solar easement; and

35 (b) A description of the extent of the solar easement which is  
36 sufficiently certain to allow the owner of the real property subject to  
37 the easement to ascertain the extent of the easement. Such description  
38 may be made by describing the vertical and horizontal angles, expressed

1 in degrees, at which the solar easement extends over the real property  
2 subject to the easement and the points from which those angles are to  
3 be measured, or the height over the property above which the solar  
4 easement extends, or a prohibited shadow pattern, or any other  
5 reasonably certain description.

6 (5) Any instrument creating a solar easement may include:

7 (a) The terms or conditions or both under which the solar easement  
8 is granted or will be terminated; and

9 (b) Any provisions for compensation to the owner of property  
10 benefiting from the solar easement in the event of interference with  
11 the enjoyment of the solar easement, or compensation to the owner of  
12 the property subject to the solar easement for maintaining the solar  
13 easement.

14 **Sec. 3.** RCW 64.04.160 and 1979 ex.s. c 170 s 14 are each amended  
15 to read as follows:

16 (1) Except as provided otherwise in this chapter, a solar easement  
17 created under this chapter may only be created by written agreement.  
18 ~~((Nothing in this chapter shall be deemed to create or authorize the~~  
19 ~~creation of an implied easement or a prescriptive easement.))~~

20 (2) Solar easements for solar energy systems erected and operating  
21 on or after January 1, 2009, are implied and need not be written  
22 instruments.

23 **Sec. 4.** RCW 64.04.170 and 1979 ex.s. c 170 s 13 are each amended  
24 to read as follows:

25 (1) In any action for interference with a solar easement, if the  
26 instrument creating the easement does not specify any appropriate and  
27 applicable remedies, the court may choose one or more remedies  
28 including but not limited to the following:

29 ~~((1))~~ (a) Actual damages as measured by increased charges for  
30 supplemental energy, the capital cost of the solar energy system,  
31 and/or the cost of additional equipment necessary to supply sufficient  
32 energy:

33 ~~((a))~~ (i) From the time the interference began until the actual  
34 or expected cessation of the interference; or

35 ~~((b))~~ (ii) If the interference is not expected to cease, in a

1 lump sum which represents the present value of the damages from the  
2 time the interference began until the normally expected end of the  
3 useful life of the equipment which was interfered with;

4 ~~((+2))~~ (b) Reasonable and necessary attorney's fees as fixed by  
5 the court; and

6 ~~((+3))~~ (c) An injunction against the interference.

7 (2)(a) An action for interference with an implied solar easement  
8 for a solar energy system erected and operating on or after January 1,  
9 2009, may be commenced only if the owner of the property upon which the  
10 solar energy system is located has documented the existence and  
11 operation of the system through a recorded instrument filed with the  
12 appropriate county auditor or recording officer.

13 (b) If the action is for interference with an implied solar  
14 easement, the court may grant the interferee up to one hundred eighty  
15 days to remedy the interference.

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